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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 MEGAN KELLY,

13 Plaintiff,

14 v.

15 APPLERA CORPORATION,

16 Defendant.
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Case No. C-07-3002 MMC

**DEFENDANT APPLERA
CORPORATION'S CASE MANAGEMENT
CONFERENCE STATEMENT AND
[PROPOSED] ORDER**

Date: September 14, 2007
Time: 10:30 a.m.
Courtroom: 7, 19th Floor

Judge: The Honorable Maxine M.
Chesney

1 Defendant submits this Case Management Statement and [Proposed] Order and
 2 requests the Court to adopt it as its Case Management Order in this case. Pursuant to the Court's
 3 Case Management Conference Order, this Statement is accompanied by the signed declaration of
 4 Michael G. Pedhirney setting forth the grounds for Defendant's separate Statement.

5 **1. Jurisdiction and Service**

6 Defendant contends that this Court has subject matter jurisdiction pursuant to the
 7 provisions of 28 U.S.C. § 1441(b) because complete diversity exists between Plaintiff and Defendant
 8 and the amount in controversy exceeds the jurisdictional minimum of this Court.

9 Plaintiff has served Defendant with the Summons and Complaint.

10 **2. Factual Issues**

11 Plaintiff is currently employed and has been employed by Defendant as an Associate
 12 Production Chemist since February 11, 2002. According to Plaintiff's Complaint, on July 6, 2004,
 13 Plaintiff tripped and sprained her ankle. Plaintiff went on an extended medical leave until
 14 September 2004. (Complaint, ¶¶ 8-9.)

15 Plaintiff alleges that "[a]s part of her return to work, [she] was supposed to be able to
 16 sit down whenever she needed to," and that Defendant "pressured [her] to get orders done quickly,
 17 and [she] was seldom able to sit down." (*Id.*, ¶ 8.) Plaintiff also alleges in her Complaint that "[o]n
 18 or about September 21, 2004, while moving about extensively and attending to multiple tasks at the
 19 same time, [she] re-injured her right ankle." (*Id.*, ¶ 9.) Plaintiff alleges that "[t]he re-injury was
 20 quite serious, in that [her] ankle did not heal well, and she continued experiencing serious instability
 21 in her right ankle." (*Id.*) Plaintiff also alleges that "[t]ests performed by [her] disability insurer in or
 22 about January 2005 to evaluate [her] readiness to return to work seriously injured [her] left wrist,
 23 requiring a visit to the emergency room." (*Id.*)

24 Plaintiff contends that her "ankle condition is a physical impairment that limited her
 25 ability to perform the major life activity of work." (*Id.*, ¶ 10.) She further alleges that "[t]he severity
 26 of [her alleged] disability required her to remain off of work for a period of time." (*Id.*, ¶ 11.)

1 Plaintiff went on leave, during which time, she contends that she presented Defendant
2 with physicians' notes in support of her requests for time off of work and regularly left telephone
3 messages with her immediate supervisor regarding her status and the progress of her recovery. (*Id.*)

4 According to Plaintiff, in January 2006, her "physicians determined that she was well
5 enough to return to work, with restrictions on the number of hours she could work, a restriction on
6 lifting any more than 20 lbs, and a requirement that she sit down every hour for at least 10 minutes."
7 (*Id.*, ¶ 12.) Plaintiff also alleges that she "provided defendants [sic] with a physician's note
8 authorizing her return to work, and specifying these restrictions." (*Id.*)

9 Plaintiff alleges that she telephoned her supervisor, Jonathon Laosiri, to discuss her
10 return to work, but that he did not return her calls. Plaintiff also contends that she approached
11 Defendant's Human Resources Department directly to "explain[] that she was authorized to return to
12 work, and specifying [her] restrictions." (*Id.*, ¶ 13.)

13 Plaintiff contends that Defendant made no effort to return Plaintiff to work until in or
14 around May 2007 and that Defendant "summarily informed Plaintiff that she could not return to
15 work unless she either had no restrictions at all and/or could work twenty hours per week." (*Id.*, ¶
16 14.) Plaintiff also alleges that she sought accommodations from Defendant beginning in January
17 2006, but Defendant refused to offer her "reasonable accommodations that that would allow her to
18 return to work."

19 After Plaintiff provided additional information from her health care providers
20 regarding her restrictions, Defendant allowed Plaintiff to return to work on June 18, 2007.

21 Defendant denies Plaintiff's material allegations. In addition, Defendant contends
22 that Plaintiff and her counsel failed to engage in the interactive process in good faith and that
23 Plaintiff and her counsel interfered with and obstructed the interactive process. Furthermore,
24 Defendant contends that Plaintiff did not suffer any damages as a result of Defendant's alleged
25 conduct.

1 In summarizing the above, the principal facts in dispute are:

2 Whether Plaintiff was or is disabled, had a record of being disabled, or was
3 regarded/perceived as disabled, within the meaning of the Fair Employment and Housing Act
4 (“FEHA”);

5 Whether Plaintiff made a request for accommodation in January 2006;

6 Whether Defendant engaged in the interactive process at all in response to Plaintiff’s
7 January 2006 request for accommodation;

8 Whether Defendant responded to any of Plaintiff’s communications to it between
9 September 2004 and January 2006;

10 Whether Defendant engaged in the interactive process in good faith;

11 Whether Plaintiff engaged in the interactive process in good faith;

12 Whether Plaintiff interfered with and/or obstructed the interactive process;

13 Whether Plaintiff made a request for a reasonable accommodation;

14 Whether Plaintiff’s alleged request for an accommodation was reasonable.;

15 Whether Plaintiff’s alleged request for an accommodation constituted an undue
16 hardship under the FEHA;

17 Whether Plaintiff requested to return to work prior to December 2006;

18 Whether Defendant denied Plaintiff a reasonable accommodation;

19 Whether Defendant’s conduct was malicious and oppressive thereby qualifying
20 Plaintiff for punitive damages.

21 Whether and to what extent Plaintiff suffered economic damages as a result of
22 Defendant’s alleged conduct.

23 Whether Plaintiff suffered emotional injuries, and if so, whether they were because of
24 Defendant’s alleged conduct, or rather, due to preexisting or concurrent causes.

25 **3. Legal Issues**

26 Whether Plaintiff was a qualified individual with a disability. *Green v. State of Cal.*,
27 __ Cal. 4th __, S137770 (August 23, 2007);

Whether Plaintiff could perform the essential functions of her job, with or without reasonable accommodation. *Id.*;

Whether Defendant refused to offer Plaintiff a reasonable accommodation in violation of the FEHA. California Gov't Code § 12940(m);

Whether Defendant reasonably accommodated Plaintiff's alleged disability by granting her extended leaves of absence to recuperate instead of terminating her employment. *Id.*;

Whether Defendant or Plaintiff engaged in good faith in the interactive process. California Gov't Code § 12940(n);

Whether Plaintiff or Defendant interfered with and/or obstructed the interactive process. *Id.*;

Whether Plaintiff or Defendant's alleged interference in the interactive process legally excused or prevented the other party from engaging in the interactive process;

Whether Plaintiff's alleged proposed reasonable accommodation available constituted an undue hardship under the FEHA;

Whether Plaintiff mitigated her alleged damages;

Whether Plaintiff is entitled to recover punitive damages against Defendant. California Civil Code § 3294;

Whether Plaintiff is entitled to recover prejudgment interest against Defendant. California Civil Code §§ 3287, 3288;

Whether Plaintiff or Defendant is entitled to recover attorneys' fees. California Gov't Code § 12965(b).

4. Motions

There are no pending motions before this Court. Defendant intends to file a motion for summary judgment with regard to Plaintiff's claims.

5. Amendment of Pleadings

Defendant does not intend to amend any of its pleadings.

6. Evidence Preservation

Defendant has suspended all document-destruction policies that could have

1 potentially resulted in the destruction of any discoverable information pertinent to this dispute.

2 **7. Disclosures**

3 Defendant proposes exchanging initial disclosures at a mutually agreed upon date and
4 time prior to close of business on September 14, 2007.

5 **8. Discovery**

6 The parties have not participated in any discovery at this time.

7 Defendant proposes to the Court the following discovery plan:

8 a. *Discovery will be needed on subjects, including but not limited to:*

9 The factual and legal issues identified above.

10 b. *Discovery Limits:*

11 Maximum of 25 interrogatories by each party to any other party without stipulation or
12 court order. FRCP 33(a).

13 Maximum of 25 FRCP 34 requests for documents and things.

14 Maximum of 35 requests for admission by each party to any other party without
15 stipulation or court order.

16 Maximum of 10 depositions by each party without stipulation or court order.

17 c. *Discovery Modifications*

18 Defendant requests that it be permitted two days to depose Plaintiff.

19 **9. Class Actions**

20 Not applicable.

21 **10. Related Cases**

22 Defendant is not aware of any other pending related cases.

23 **11. Relief**

24 According to Plaintiff's Complaint, Plaintiff seeks compensatory and general
25 damages in an amount according to proof; punitive damages; attorneys' fees and costs; pre-judgment
26 and post-judgment interest; and costs of suit.

27 Defendant seeks costs of suit and attorneys' fees.

28 **12. Settlement and ADR**

1 The parties mediated this case on September 4, 2007, but were unable to reach a
2 resolution of the dispute.

3 **13. Consent to Magistrate**

4 Defendant does not consent to assignment of this case to a Magistrate Judge for trial.

5 **14. Other references**

6 Defendant believes that this case is not suitable for reference to binding arbitration, a
7 special master or the Judicial Panel on Multidistrict Litigation.

8 **15. Narrowing of Issues**

9 Defendant requests that the trial be bifurcated with respect to the issue of punitive
10 damages.

11 **16. Expedited Schedule**

12 This case cannot be handled on an expedited basis with streamlined procedures.

13 **17. Scheduling**

14 a. *Fact and Expert Discovery Cutoff:*

15 Fact discovery cutoff: Defendant proposes that the last day to complete fact discovery
16 be January 25, 2008.

17 Expert discovery cutoff: Defendant proposes that expert disclosures be due by
18 January 25, 2008 and that the last day to complete expert discovery be February 29, 2008.

19 c. *Dispositive Motions.*

20 Defendant proposes that dispositive motions be heard no later than March 14, 2008.

21 d. *Pretrial Conference*

22 The case should be ready for pre-trial conference by May 2008.

23 e. *Trial*

24 The case should be ready for trial by June 2008.

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28 **18. Trial**

1 Defendant contests that Plaintiff has waived her right to a jury trial.

2 Based on the information presently available to counsel for Defendant, Defendant
3 estimates that the trial will take approximately 2-4 days.

4 **19. Disclosure of Non-Party Interested Entities or Persons.**

5 Defendant filed its Disclosure of Non-Party Interested Entities or Persons on
6 September 7, 2007.

7 **20. Other Matters**

8 Defendant is not aware of any other matter as may facilitate the just, speedy and
9 inexpensive disposition of this matter.

10 Dated: September 7, 2007



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